IN THE HIGH COURT OF UTTARANCHAL AT

NAINITAL

Writ Petition No. 5710 (M/S) of 2001

(Old No. 19335/92)

Jogendra Singh son of Sri Mula Singh
R/o Chandanpur, Post-Kela Khera
District Nainital .....Petitioner

Versus

1. State of U.P.
2. District Judge, Nainital
3. The Additional sub Divisional officer/Prescribed Authority, Kashipur, Nainital ....Respondents

Dated 22.6.2006

Hon'ble Rajesh Tandon, J.

Heard Sri P.M.N. Singh, Sr. Advocate, assisted by Ms. Prabha Noliyal, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari, quashing the orders dated 31.1.1991, and 6.4.1992 passed by the Prescribed Authority as well as Appellate Authority namely District Judge Nainital.

Briefly stated, according to the case of the petitioner, exparte order was passed by the Prescribed Authority on 31.1.1991, directing the eviction of the petitioner in proceedings under section 4 of the U.P. public Premises (Eviction of Unauthorised Occupants) Act, 1972 in respect of land mentioned below:-

vuqlwph

xzke	[kljk uEcj	jdok
pUnuhui qjk gS	53 o	0-455
	59@2 o	0-803

gS

The petitioner has preferred the appeal. The appeal was also dismissed without entering into the merits.

Both the Courts below have decided the case exparte without deciding the case on merits. It is well settled that opportunity should be given to the parties to contest the case on merits instead of deciding the same exparte on one reason or the other.

In **N. Balakrishnan Vs. M. Krishnamurthy, 1998 S.C.F.B. and Rent Cases Pages 427,** It has been held that law of limitation is founded in public policy on 'the

maxim of interest reipublicae up sit finis litium' i.e. fall the general welfare, it has been held as under:-

"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause".

In view of the above, the matter is sent back to the Prescribed Authority for deciding the same on merits after hearing both the parties.

The writ petition is allowed. No order as to costs.

Dated 22.6.2006 (Rajesh Tandon, J.)